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Illinois Credit Union League

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June 3, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW.,
Washington, D.C. 20551

Submitted via e-mail: regs.comments@federalreserve.gov

Re: Regulation CC; Docket Number R-1409; RIN No. 7100-AD68
Availability of Funds and Collection of Checks

Dear Ms. Johnson:

The Illinois Credit Union League represents over 370 state-chartered and federal credit unions in Illinois. We are pleased to respond on behalf of our member credit unions to the proposed amendments by the Federal Reserve Board ("Board") to Regulation CC, and Appendix C of Regulation CC. The proposed amendments would (a) condition a depository financial institution's right of expeditious return on the depository institution's agreeing to accept returned checks electronically; (b) make other changes based on the banking industry's ongoing transition to fully-electronic interbank check collection and returns; and (c) amend the funds availability schedule and model disclosures to reflect the fact that there are no longer any non-local checks.

Right of Expeditious Return

The Board states that it is proposing amendments to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and returns. It appears that the intent of the "right of expeditious return" amendments is to "force" the industry's transition rather than "facilitate" the transition.

Credit unions as a group are substantially smaller than the other depository institutions subject to Regulation CC. Smaller financial institutions are much more likely to rely on paper returns. We believe it is appropriate to require financial institutions that employ electronic forward collection to accept electronic returns. We believe that financial institutions that do not employ electronic forward collection should continue to be protected by Regulation CC's the expeditious return requirements even though the returns are non-electric.

If the Board is determined to proceed with this amendment there should, at the minimum, be an 18-month period before it is implemented.

Proposed Amendments that Substantially Increase Fraud Risk

While the average time for returns has decreased, there have been increased check fraud losses due to the improvement in the “quality” of counterfeit checks (particularly cashier’s checks and other checks with next day availability) and shortened hold periods resulting from the elimination of non-local checks. We believe that implementation of the proposed amendments discussed below will increase the amount of check fraud.

Reduction in the Reasonable Extension Hold

The current reasonable extension hold for local checks is five additional days (a total of seven days from the date of deposit). The amendment would reduce the extension hold to two additional days (four days from the date of deposit).

This is by far the amendment that causes the greatest concern to credit unions. The majority of credit unions do not employ the standard holds. Most credit unions do, however, occasionally employ the extended holds when there is something about the transaction that causes the credit union to fear the item may be returned unpaid. Regulation CC has always required that the extended hold may only be imposed if the financial institution provides the depositor with a notice of the extended hold, the length of the hold, and the reason(s) why the extended hold is being imposed.

The Board states that virtually all checks are returned by the third business day after the deposit. While the average time for returns has decreased, our credit unions have informed us that a substantial number of checks are not returned by the third business day.

We emphasize that the checks subject to the extended hold are checks that are subject to greater risk of non-payment. In addition, smaller credit unions have fewer resources to detect and manage fraud, and the risk of slower return will increase if the expeditious return protection is removed for paper returns.

Regulation CC initially contained statutorily mandated “temporary” holds of five days for local checks and seven days for non-local checks and the seven and eleven day extended holds were determined by adding four additional days to the standard local and non-local holds. When the Regulation was amended to impose the “permanent” holds of two days for local checks and five days for non-local checks, the Board felt that the extended holds should not be shortened and the extended holds remained seven days for local checks and eleven days for non-local checks.

We suggest the somewhat decreased time for returns would warrant a reduction in the additional number of days to four days (a total of six days from the day of deposit). We believe a six day hold is not a substantial inconvenience when it can only be imposed in specific situations that must be disclosed to the depositor—particularly when it is the intent of some of the depositors subject to the extended hold to defraud the institution. We urge the Board to consider that the negative impact of an increase in losses from fraudulent checks ultimately falls on the members or customers of depository institutions.

Notice of Nonpayment

The Board proposes to remove the current requirement that there must be notice of nonpayment of checks of \$2,500 or more that must be received by the depository financial institution by 4:00 p.m. of the second business day after the banking day the check was presented to the paying financial institution. We believe that the current requirement provides a valuable tool in the mitigation of fraud. Credit unions that receive returned checks electronically have informed us that the notice of nonpayment is often received prior to the electronic return. As stated above, credit unions have informed us that many returned checks are received four business days or more after deposit. Removal of the expedited notice requirement for large items will undoubtedly increase fraud losses.

Model Forms

We believe the revised model disclosures contained in Appendix C provide the necessary disclosures in a more understandable manner. We are pleased that the Board will not require financial institutions to provide the new disclosures to current accountholders if the financial institution provides notice to the accountholders of any changes resulting from the final amendments to Regulation CC. We also appreciate the clarification that the safe harbor will continue to apply to current forms provided to new account holders within one year of the effective date of the final amendments if the current forms are suitably modified to disclose any required changes to the number of days or dollar amounts.

We are pleased to be afforded the opportunity to comment on the proposed amendments to Regulation CC. For the reasons discussed above, we believe the amendments regarding removal of the right of expeditious return, decreasing the additional extended hold for “questionable” checks from five days to two days, and removing the required notice for large items would substantially increase credit union losses from fraudulent check. Please contact me at 800-942-7124 ext.4262 if you have any questions concerning the above comments.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

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